

Journal of Environmental and Sustainability Law

Missouri Environmental Law and Policy Review
Volume 18
Issue 1 *Fall 2010*

Article 1

2010

Title Page

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Recommended Citation

Title Page, 18 Mo. Env'tl. L. & Pol'y Rev. (i) (2010)

Available at: <https://scholarship.law.missouri.edu/jesl/vol18/iss1/1>

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MISSOURI ENVIRONMENTAL LAW AND POLICY REVIEW

A publication by the University of Missouri-Columbia School of Law and The Missouri Bar

VOLUME 18

FALL 2010

NUMBER 1

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EDITOR'S PERSPECTIVE

On December 6, 2010, the United States Supreme Court granted a petition for writ of certiorari in the Second Circuit case *Connecticut v. American Electric Power Co.* (AEP). Given this, our lead articles, which both address the essential issues found in *Connecticut v. AEP*, prove to be more relevant than ever.

Richard O. Faulk authors our first article of Volume 18, entitled *Uncommon Law: Ruminations on Public Nuisance*. Mr. Faulk's article focuses on the use of the common law tort of public nuisance in global warming suits and argues that the court system should exercise caution in allowing for any expansion of the public nuisance tort. Specifically, Mr. Faulk points out that in the context of global warming suits, plaintiffs are increasingly framing their global warming arguments in terms of public nuisance tort claims in order to increase their chances of relief. The article asserts that if this argument is accepted throughout the federal court system, judges could be removing debates and making decisions that are better left to the political branches. Mr. Faulk, instead, advocates for jurists and judges to understand their limitations in being able to decide climate change claims and preserve the right of the political branches to debate the coming issue of our time.

Our second author, Joseph Forderer, offers further skepticism of public nuisance suits in his article *State Sponsored Global Warming Litigation: Federalism Properly Utilized or Abused?*. Mr. Forderer examines the federalism implications in climate change suits through the lens of *Connecticut v. AEP*. Specifically, the article argues that *Connecticut v. AEP* serves as an example of an abuse of the federalist system because it does not advance the values underlying federalism and serves as an inefficient solution to the global warming problem. Mr. Forderer reaches the same conclusion as Mr. Faulk, that climate change and global warming questions are best left to the executive and legislative bodies of the country.

Mary Cile Glover-Rogers authors our lead note entitled *Who's Footing the Bill for the Attorneys' Fees?: An Examination of the Policy Underlying the Clean Water Act's Citizen Suit Provision*. Mary Cile's note examines the case *Saint John's Organic Farm v. Gem County Mosquito Abatement District* and its holding that the standard adopted by

the court gives district courts limited discretion in disallowing an award of attorneys' fees to prevailing parties. The note discusses and endorses the wisdom of this decision, as giving district courts limited discretion to disallow attorneys' fees results in a more "liberal" standard to award attorney's fees, and thereby incentivizes plaintiffs to commence CWA citizens suits and environmental litigation.

Aaron Sanders authors our second note, *Where Are We Going to Put All of This Junk? The Ninth Circuit Dismisses an Attempt to Construct a Large Landfill in Southern California*. The subject of Aaron's note, *National Parks & Conservation Association v. Bureau of Land Management*, held that a land exchange proposal and subsequent action between Kaiser, a company seeking to construct a landfill, and the Bureau of Land Management violated the FLPMA and NEPA. Aaron takes exception to the Ninth Circuit's decision, asserting that the court fails to achieve the Acts' purposes of finding a balance between people and the environment by applying environmental laws strictly.

Johnathan R. Austin authors our third note, *Prairie Winds: A Look at Commercial Wind Farm Regulation Within Kansas*, which examines the Kansas Supreme Court case *Zimmerman v. Board of County Commissioners of Wabaunsee County*. In *Zimmerman*, the Kansas Supreme Court held that the Wabaunsee County Board of Commissioners acted reasonably in its decision to ban Commercial Wind Energy Conversion Systems within Wabaunsee County. Johnathan's note asserts that the Kansas Supreme Court correctly decided *Zimmerman*, as it rightfully gave deference to the Board's decision. The note further states that the decision correctly preserves the people's ability to accept or reject the Board's decision through the electoral process and therefore leaves the policy-making decisions to the state's legislative bodies.

Katie Jo Wheeler authors our fourth and final note of the edition, *No PRP Left Behind: The Tenth Circuit Allows Non-Settling PRPs to Intervene as of Right in CERCLA Consent Decree Actions*. The note addresses the question of whether non-settling, potentially responsible, parties can intervene as of right in CERCLA lawsuits in order to protect their contribution claims against the settling PRPs. By focusing on *United States v. Albert Inv. Co.*, which held that non-settling PRPs can intervene, Katie Jo's note uses the *Albert Co.* decision to highlight the Eighth, Ninth, and Tenth Circuit's "minority" holdings that have favored the non-settling

PRPs. Katie Jo advocates that the *Albert Co.* court, like the decisions in the Eighth and Ninth Circuit, reached the right conclusion, as allowing all parties to sit at the litigation table leads to a more equitable implementation of CERCLA.

The issue concludes with nine updates discussing recent court holdings throughout the country that impact environmental law.

Thanks are in order to the Board and the Associates, whose hard work have made this issue possible. Finally, and most importantly, thanks go to our advisor, Professor Thom Lambert, who has guided us through yet another edition and has been available at a moment's notice to answer all of our questions and deal with any problems that may occur.

MICHAEL A. MOOREFIELD
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